

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AARON JOEL LOYD

Appeal 2007-0261
Application 09/915,070
Technology Center 2100

Decided: March 26, 2007



Before JAMES D. THOMAS, KENNETH W. HAIRSTON, and JOSEPH L. DIXON, *Administrative Patent Judges*.

JAMES D. THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134, Appellant has appealed to the Board from the Final Rejection of claims 1, 3, 7 through 9, 13, 17, 19 through 21 and 24.

As representative of the disclosed and claimed invention, independent claim 1 is reproduced below:

1. A method for monitoring the operation of an electronic network, said network comprising a first electronic device and a second electronic device, said method comprising;

determining the utilization of a first data path between said first electronic device and said second electronic device;

determining the utilization of a second data path between said first electronic device and said second electronic device;

comparing said utilization of said first data path and said second data path over a period of time; and

providing an indication if said utilization of said first data path increases a preselected amount and said utilization of said second data path decreases a preselected amount during said period of time.

The following reference is relied by the Examiner:

Waclawsky

US 5,974,457

Oct. 26, 1999

All claims on appeal, claims 1, 3, 7 through 9, 13, 17, 19 through 21 and 24 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the Examiner relies upon Waclawsky alone.

Rather than repeat the positions of the Appellant and the Examiner, reference is made to the Brief (no Reply Brief has been filed) for Appellant's positions, and to the Answer for the Examiner's positions.

OPINION

For the reasons set forth by the Examiner in the Answer, as expanded upon here, we sustain the rejection of all claims on appeal under 35 U.S.C.

§ 103. It appears that Appellant has essentially argued the features of independent claim 1 as also representative of the features of independent claim 13. Claim 8 is argued to be representative of the features of dependent claim 20, and the same may be said of dependent claim 9 with respect to corresponding limitations in dependent claim 21.

Turning first to the features recited in independent claim 1 on appeal, the claimed first data path and second data path are not recited to be different. They may, in fact, be the same path with different, discrete times of monitoring or times of day, for example. The comparing function, in contrast to the position set forth at the bottom of page 9 of the Brief, does not recite “comparing the utilization of the first data path (to or with) the second data path but merely comparing the first data path “and” the second data path. As disclosed at the top of page 12 of the Specification as filed, for example, the comparison is with respect to preselected parameter values. As disclosed, the claimed utilization relates to the use of a data path. The “preselected amount” recited at the end of independent claims 1 and 13 on appeal may be zero since no amount is specified. The same may be said of the “preselected value” recited in claim 8 on appeal. Likewise, the correspondingly broadly recited “previous measurements” of dependent claim 9 encompass features where these measurements were zero or one.

In contrast to Appellant’s positions at pages 8 through 10 of the Brief that Waclawsky fails to teach or suggest all the limitations of independent claims 1 and 13 on appeal, we do not agree with this view. The focus of the arguments as to these claims relates to the “providing” clause at the end of each claim on appeal. The basic thrust of Appellant’s positions here is that the disclosure in Waclawsky relates to monitoring devices per se over time

and comparing the present characteristics of a device with past characteristics of the same device. We are somewhat perplexed by this argument since the reference deals entirely with monitoring data traffic/activity/use or utilization of a network as disclosed and to do so in a manner independent of any devices that may operate at any point on the network.

Columns 1 and 2 of Waclawsky indicate to the artisan monitoring the use or the activity of various types of networks and network protocols to include monitoring nodes which are clearly indicative of various paths that may exist within the network. Also, it is noted that the reference teaches of load balancing and load distribution and the modification of network routings based upon these determinations. Even the abstract relates to benchmarks which may be customized as shown in figure 1A-1 as well as being based upon historical data in figure 1A-2 which relates to previously monitored values either or both of which are utilized in compare operations to determine use or utilization of parts or the whole network.

The reference contains extensive and comprehensive teachings relating to these features as well as the presentation of indications of network activity as generally shown in the two parts of figure 1B. The two parts of figure 1A illustrate the ability to pick various time frames or time periods. The various parts of figure 6 relate to real time monitoring operations, whereas figures 9 and 10 relate to various types of logical benchmarking activities to include time frame settings, autolog triggers and benchmark triggers and certain conditional controls. On the basis of even this cursory review of certain portions of Waclawsky, the Examiner appears

to us to have ample basis from which to conclude the obviousness from an artisan's perspective of the broadly recited "providing" clauses as argued at the end of independent claims 1 and 13 on appeal.

When the features of argued dependent claims 8 and 9 are considered in light of these noted teachings, again we conclude that the artisan would have found them obvious. With respect to dependent claim 8, we find persuasive the Examiner's observations in the paragraph bridging pages 9 and 10 of the Answer where the Examiner recognizes the negative limitation recited in this claim and persuasively concludes that the bottom line of the subject matter of claim 8 is to "suggest anything other than the values of said plurality of measurements that exceed said value of the average of previous measurements plus a preselected value can be used to calculate subsequent average values." We note as well since no Reply Brief has been filed that the Examiner's positions with respect to dependent claim 9 have not been traversed, such as the observation at pages 10 and 11 that the nature of the measurements in dependent claim 9 are exemplary of many well-known means of providing an indication if a measurement exceeds the bounds of normal behavior. With respect to dependent claims 8 and 9, the latter columns of Waclawsky actually teach the artisan to modify the monitoring, the benchmark, the expert criteria, and the operability of the expert system 160 to whatever is desired.

In view of the foregoing, the decision of the Examiner rejecting all claims on appeal under 35 U.S.C. 103 is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR §1.136(a). See 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

PGC

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